

§18-237-8.6-01 Definitions. Where used in sections 18-237-8.6-01 to 18-237-8.6-10, unless the context otherwise requires:

"Amusements" means operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public.

"Business" means the same as the term is defined in chapter 237, HRS.

"Business situs" is a situs acquired for tax purposes by one who has carried on a business in the state more or less permanent in its nature. A situs arising when notes, mortgages, tax sale certificates and the like are brought into the state for something more than a temporary purpose, and are devoted to some business use there and thus become incorporated with the property of the state for revenue purposes. A situs arising where possession and control of property or investment away from owner's domicile so that its substantial use and value primarily attach to and become an asset of the outside business.

"Contractors" means the same as the term is defined in chapter 237, HRS.

"Contracting" means the same as the term is defined in chapter 237, HRS.

"Control" means to exercise restraining or directing influence over.

"Documented" means recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which may be evidentially used.

"Gross income" means the same as the term is defined in chapter 237, HRS.

"Gross proceeds of sale" means the same as the term is defined in chapter 237, HRS.

"Hawaii district" means the taxation district for the county of Hawaii.

"Home office" means the principal place of business in this State from which the trade or business of the taxpayer is directed or managed.

"Intangible property" means, but not limited to, franchises, patent, copyright, formula, process, design, pattern, knowhow, format, or other similar items.

"Job site" means the place where a structure or group of structures was, is, or is to be located. It is a location of a property or a plot of land prepared for or underlying a structure or development.

"Kauai district" means the taxation district for the county of Kauai.

"Maui district" means the taxation district for the counties of Maui and Kalawao, which includes the islands of Maui, Molokai, and Lanai.

"Nexus" means, but is not limited to, physical presence in the State.

"Oahu district" means the taxation district for the city and county of Honolulu.

"Physical presence" means the presence of employees, representatives, property, or closely-related subsidiaries.

"Place of business" means a physical location in this State at which the trade or business of the taxpayer is conducted. This term does not include a transient or insubstantial location or facilities, such as hotel rooms, dropboxes, telephone number listings, or telephone answering services.

"Profit centers" are measurement tools used by many different industries. They are a means by which management of a company can analyze revenues and related expenses generated by a profit unit. A profit unit can be a product, a line of business or a person.

"Real Property" means the same as the term is defined in chapter 237, HRS.

"Reasonable allocation method" is a method used to distribute a measurement, such as revenue and cost, in a

clear, fair and proper manner, such as based on the amount of time spent.

"Service business" means the same as the term is defined in chapter 237, HRS.

"Tangible personal property" is generally property, which may be touched or felt.

"Taxation district" means the Kauai district, Hawaii district, Maui district, or Oahu district, as those districts are defined in this section.

"Taxpayer" means any person liable for tax under chapter 237, HRS. [Eff / /06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-02 Allocation of gross income and gross proceeds from sales of tangible personal property. Except as provided in this section, the gross income and gross proceeds of sale derived from a taxpayer's sale of tangible personal property, shall be allocated to the taxation district to which the property is delivered, regardless of where title to the property passes. The county surcharge pursuant to section 237-8.6, HRS shall be imposed on gross income and gross proceeds for sales of tangible personal property shipped or delivered to the Oahu district provided the taxpayer has substantial nexus with the Oahu district. Substantial nexus is created by, but not limited to physical presence, such as employees, representatives, or property, in the Oahu district for purposes of the county surcharge under section 237-8.6, HRS.

Example 1: Taxpayer, a retailer located in the Oahu district, receives an order for products from Purchaser. Taxpayer accepts the order and delivers the products to the Maui district. Taxpayer shall allocate the gross income from this sale to the Maui district, where the products were delivered. Taxpayer will not be subject to the 0.5% county surcharge because the surcharge is levied on gross income in the Oahu district only and the destination of the shipment is outside Oahu.

Example 2: Taxpayer, a retailer located in the Maui district with an office or store in the Oahu district, delivers products to Purchaser in the Oahu district. Taxpayer shall allocate the gross income or gross proceeds from these sales to the Oahu district, where the products were delivered. Taxpayer will be subject to the 0.5% county surcharge because substantial nexus with the Oahu district is established through its office or store on Oahu.

Example 3: Taxpayer, a retailer located in the Maui district, sells products to Purchaser, located in the Oahu district. Pursuant to Purchaser's instructions, the Taxpayer directs the Taxpayer's product manufacturer, who is located in the Kauai district, to deliver the products to Purchaser's office or project in the Maui district. Taxpayer shall allocate the gross income or gross proceeds from these sales to the Maui district, where the products were delivered. Taxpayer will not be subject to the 0.5% county surcharge because the surcharge is levied on gross income in the Oahu district only and the destination of the shipment is outside Oahu.

Example 4: Taxpayer, located in the Maui district, does not have an office, store, or other representation in the Oahu district, delivered products to Purchaser, who

maintains a central warehouse in the Oahu district. Subsequently, Purchaser ships or delivers the products to its branch stores located in other taxation districts. Taxpayer shall allocate the gross income or gross proceeds from these sales to the Oahu district, where the products were delivered. Taxpayer will not be subject to the 0.5% county surcharge because substantial nexus with the Oahu district is not established.

Example 5: Taxpayer, a retailer located out-of-state, has a sales agent on Oahu, sells and delivers products to Purchaser on Oahu. Taxpayer will be subject to the general excise tax for the sales on Oahu because substantial nexus with the State is established through its sales person on Oahu. Accordingly, Taxpayer will be subject to the 0.5% county surcharge because sufficient nexus with the Oahu district is established through its sales person on Oahu.

Example 6: Same facts as in example 5, except that Taxpayer does not have an office, employees or representatives, including any sales person, on Oahu. Taxpayer will not be subject to the general excise tax for the sales on Oahu because there is no nexus with the State. Taxpayer will not be subject to the 0.5% county surcharge either because nexus with the Oahu district is not established. [Eff //06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-03 Allocation of gross income received by service businesses. Gross income received by a taxpayer engaged in a service business shall be allocated to the taxation district in which the services are intended to be used or consumed. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to the taxation district and that allocation method is documented. The county surcharge pursuant to section 237-8.6, HRS shall be imposed on gross income and gross proceeds for services intended to be used or consumed in the Oahu district provided the taxpayer has nexus with the Oahu district.

Example 1: Taxpayer, an attorney whose home office is in the Oahu district, is retained by a client in the Maui district to prepare a lease for land on Kauai. Taxpayer shall allocate the income to the Kauai district, where the services are intended to be consumed. Taxpayer will not be subject to the 0.5% county surcharge because the services are intended to be consumed outside Oahu.

Example 2: Taxpayer is an accounting firm. Taxpayer has a home office in the Oahu district. Taxpayer's employees travel to other taxation districts to conduct audits of clients. Taxpayer shall allocate income to the taxation districts, where the services are intended to be consumed by the clients. Taxpayer will be subject to the 0.5% county surcharge for services intended to be consumed in the Oahu district and the Taxpayer has nexus with the Oahu District.

Example 3: Taxpayer provides dentistry services from places of business in all of the taxation districts. Taxpayer has a home office in the Maui district. Taxpayer travels to the Oahu district to provide dentistry services. Taxpayer shall allocate the gross income to the taxation districts, where the services are intended to be used or consumed. In this case, substantial nexus is established by Taxpayer's physical presence on Oahu. Taxpayer will be subject to the 0.5% county surcharge for services intended to be used or consumed in the Oahu district but will not be subject to the 0.5% county surcharge for services intended to be consumed in the taxation districts other than the Oahu district.

Example 4: Taxpayer is a law firm comprised of sixty-five attorneys. Sixty attorneys work in the Taxpayer's home office in the Oahu district and five work in the Taxpayer's place of business located in the Hawaii district. Taxpayer is retained by a client in the Hawaii district for a court

case in the Hawaii district. Taxpayer shall allocate gross income from services performed by the attorneys in the Hawaii taxation district where Taxpayer's services are intended to be used or consumed, notwithstanding incidental travel, meetings, or court appearances, outside of the taxation district, or receipt of support services from the place of business located outside of the taxation district. Taxpayer will not be subject to the 0.5% county surcharge regardless of the sufficient nexus with the island of Oahu because the legal services are intended to be used or consumed in the Hawaii district. [Eff //06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

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§18-237-8.6-04 Allocation of gross income from commission.

Commission income received by a taxpayer shall be allocated to the taxation district in which the services are rendered by the taxpayer except for commission earned from real estate sales, leases, financing, mortgages and other transactions. The county surcharge pursuant to section 237-8.6, HRS shall be imposed on gross income and gross proceeds for commission where the services are rendered by the taxpayer in the Oahu district. In the case of commission earned from real estate sales or financing, e.g. mortgages, commission income received by a taxpayer shall be allocated to the taxation district in which the real property is located. The county surcharge pursuant to section 237-8.6, HRS shall be imposed on gross income and gross proceeds for commission earned from real estate sales, leases, financing, mortgages and other transactions where the real property is located in the Oahu district.

Example 1: Taxpayer has an office located on Oahu and sells travel packages for sightseeing tour of Waimea Canyon on Kauai to Purchaser located on Oahu. Taxpayer shall allocate the commission income to the Oahu district, where the services are rendered by the Taxpayer. Taxpayer will be subject to the 0.5% county surcharge because the services are rendered on Oahu.

Example 2: Same facts as in example 1, except that Purchaser is located on Maui. Taxpayer shall allocate the commission income to the Oahu district, where the services are rendered by the Taxpayer. Taxpayer will be subject to the 0.5% county surcharge because the services are rendered on Oahu.

Example 3: Same facts as in example 1, except that Taxpayer is located on Maui. Taxpayer shall allocate the commission income to the Maui district, where the services are rendered by Taxpayer. Taxpayer will not be subject to the 0.5% county surcharge because the services are rendered outside Oahu.

Example 4: Same facts as in example 1, except that Taxpayer is located on Maui and Purchaser is located in the Hawaii district. Taxpayer shall allocate the commission income to the Maui district, where the services are rendered by Taxpayer. Taxpayer will not be subject to the 0.5% county surcharge because the services are rendered outside Oahu.

Example 5: Taxpayer is a securities broker who has an office on Oahu, sells stocks to Purchaser who is located on Maui. Taxpayer shall allocate the commission income to the Oahu district where the services are rendered. Taxpayer

will be subject to the 0.5% county surcharge because the services are rendered on Oahu.

Example 6: Taxpayer is a real estate company. Taxpayer has places of business in the Oahu district, Kauai district, Maui district, and Hawaii district. Each of Taxpayer's sales agents is based in one of the places of business. The sales agents travel to other islands to meet with clients, show property, review or close transactions, and negotiate contracts. When Taxpayer is entitled to receive commission income, the agent instructs the escrow company, regardless of the taxation district in which the escrow company is located or the taxation district in which the property is located, to forward the income to Taxpayer's home office in the Oahu district where the central accounting office is located. The staff of the central accounting office forwards a percentage of the income received from the escrow company to the sales agent or agents responsible for producing the income. To determine its profit centers, Taxpayer subsequently credits the rest of the income received from the escrow company to the office where the agent is based. Taxpayer shall allocate the commission income to the taxation districts where the real property is located. In this example, the gross income derived from a sale of real property in the Oahu district, regardless of the location of the sales agent's place of business, shall be allocated to the Oahu taxation district. Taxpayer will be subject to the 0.5% county surcharge in this case because the real property is located on Oahu. Each agent of Taxpayer shall allocate the income that the agent receives to the taxation district, where the real property is located, regardless of the location of the agent's place of business. [Eff //06]
(Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-05 Allocation of gross income from the rental or lease of tangible and intangible personal property. (a) Except as provided in this section, gross income from the rental or lease of tangible and intangible personal property, shall be allocated to the taxation district in which the property is used. If the property is used in more than one taxation district, the taxpayer must allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to each taxation district, and that allocation method is documented. The county surcharge pursuant to section 237-8.6, HRS shall be imposed on gross income and gross proceeds for renting or leasing of personal property to the extent that the property is used on Oahu. Sufficient nexus with the island of Oahu is established by virtue of the personal property being used on Oahu.

Example 1: Taxpayer is engaged in the business of renting motor vehicles from a place of business in each of the four taxation districts. Taxpayer shall allocate the gross income to the taxation district in which the motor vehicle is used. Taxpayer will be subject to the 0.5% county surcharge on the gross income from motor vehicles used on Oahu because sufficient nexus with the island of Oahu is established by virtue of the personal property being used on Oahu.

Example 2: Taxpayer, located in the Oahu district, is engaged in the business of renting equipment. Taxpayer rents equipment to XYZ, located in the Maui district, for a job in the Kauai district. Taxpayer shall allocate the gross income from this rental to the Kauai district where the property is used. Taxpayer will not be subject to the 0.5% county surcharge because the property is not used on Oahu.

Example 3: Taxpayer, located in the Oahu district, licenses a copyright to a licensee located in the Maui district. Taxpayer shall allocate the gross income from the license of his copyright to the Maui district where the property is used. Taxpayer will not be subject to the 0.5% county surcharge because the property is not used on Oahu.

Example 4: Same facts as in example 3, except that Taxpayer is located in the Maui district. Taxpayer shall allocate the gross income from the license or royalty of his intangible personal property to the Maui district where the property is used. Taxpayer will not be subject to the 0.5% county surcharge because the property is not used on Oahu.

Example 5: Same facts as in example 3, except that Taxpayer is located on Maui and the licensee is on Oahu. Taxpayer shall allocate the gross income from the license of his copyright to the Oahu district where the property is used. Taxpayer will be subject to the 0.5% county surcharge because the property is used on Oahu.

(b) Where a taxpayer rents or leases tangible personal property, or licenses or receives royalty from intangible personal property, which is used in more than one taxation district, the gross income shall be allocated to the taxation districts by using a reasonable allocation method that clearly, fairly and properly reflects the gross income to each taxation district, and that allocation method is documented. This rule also applies to property, which is constantly in transit between taxation districts, such as barges, containers, and aircraft without home ports or bases. Taxpayer will be subject to the 0.5% county surcharge to the extent that the gross income from the rental or lease of the personal property is allocated to the Oahu district pursuant to a reasonable allocation method.

Example 1: Taxpayer is engaged in the business of renting equipment to XYZ for use in the Maui district and the Oahu district. The equipment will be used on Maui for six months and on Oahu for six months. Taxpayer shall allocate 50% of the gross income from the rental of the equipment to the Maui district and 50% to the Oahu district. Taxpayer will be subject to the 0.5% county surcharge on 50% of the gross income because using a reasonable allocation method based on time used, the equipment is used 50% of the time on Oahu.

Example 2: Taxpayer is engaged in the business of leasing containers to XYZ. These containers are constantly in transit between taxation districts. Taxpayer shall allocate the gross income by using a reasonable allocation method among the taxation districts that clearly, fairly and properly reflects gross income in each taxation district. Taxpayer will be subject to the 0.5% county surcharge on the gross proceeds allocable to the Oahu district as determined under a reasonable allocation method. [Eff //06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-06 Allocation of gross income from the rental or lease of real property. Gross income from a taxpayer's rental or lease of real property in this State shall be allocated to the taxation district where the real property is located. Lessors are subject to the 0.5% county surcharge for rental or lease of real property located on Oahu. Lessors on the neighbor islands are subject to the county surcharge if they rent or lease real property located on Oahu. Sufficient nexus with the Oahu district is established by the location of the real property on Oahu.

Example: Taxpayer rents condominium units located in each of the four taxation districts. Taxpayer shall allocate the gross income from the rental of each unit to the taxation district in which the condominium unit is located. Taxpayer will be subject to the 0.5% county surcharge on gross income from the condominium units rented on Oahu because sufficient nexus with the Oahu district is established by the location of the real property on Oahu. [Eff //06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-07 Allocation of gross income from contracting. Gross income from contracting shall be allocated to the taxation district where the job site is located. Contractors, with a home office in taxation districts other than Oahu, are subject to the 0.5% county surcharge if the job site is located in the Oahu district. Gross income from contracting on the island of Oahu shall be allocated to the Oahu district because the job site is located on Oahu.

Example 1: Taxpayer with an office located in Honolulu contracts for a construction project on Maui. Taxpayer shall allocate the gross income from this project to the Maui district. Taxpayer will not be subject to the 0.5% county surcharge because the job site is located outside Oahu.

Example 2: Assume the same facts in Example 1, except that Taxpayer is the prime contractor for the project and Taxpayer subcontracts various aspects of the job to architect W and engineer X, located in the Oahu district. Taxpayer shall allocate the gross income from this project to the Maui district. W and X shall allocate the gross income they receive from Taxpayer to the Maui district. Taxpayer, W and X will not be subject to the 0.5% county surcharge because the job site is located outside Oahu. [Eff //06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-08**Allocation of gross income from**

interest. (a) The gross income from a taxpayer's investment interest shall be allocated to the taxation district where the control of the investment is located unless a business situs for the investment of capital generating the interest is located elsewhere. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to the taxation district and that allocation method is documented. Taxpayer will be subject to the 0.5% county surcharge if the business's control of the investment is in the Oahu district.

Example 1: Taxpayer has retail locations on all of the islands and has corporate offices located in the Oahu district. Taxpayer has a central cash management account controlled by the corporate office located on Oahu that places the gross receipts from all retail locations into one interest bearing bank account. Taxpayer must allocate the interest received from this bank account to the Oahu district because the account is controlled by the corporate office located on Oahu. Therefore, the interest will be subject to the 0.5% county surcharge.

Example 2: The same facts as in example 1, except that a separate bank account is created for the Maui retail locations. The money deposited into that bank account is used for improvements to the Maui stores and controlled by the Maui retail locations. Interest on this bank account will not be subject to the 0.5% county surcharge.

(b) The gross income from a taxpayer's deferred payment interest shall be allocated to the taxation district in which the sale that generated the interest is assigned under section 18-237-8.6-02 or 18-237-8.6-06. Taxpayer will be subject to the 0.5% county surcharge on the interest if the taxpayer is subject to the county surcharge on the sale that generated the interest.

Example 1: Taxpayer has retail locations in all of the taxation districts. Taxpayer sells goods on an installment basis or deferred payment basis. Taxpayer must allocate the interest received on the sales by credit or on the installment basis to the taxation district in which the sale that generated the interest is assigned under section 18-237-8.6-02. The interest income generated from sales that are allocated to the Oahu district is likewise allocated to the Oahu district and subject to the 0.5% county surcharge.

Example 2: Taxpayer, who does not have an office in the State, sells business or rental real estate located on

Oahu pursuant to an agreement of sale, which provides for deferred payments of the sales price and an interest charge. Taxpayer is subject to the 0.5% county surcharge on the interest income from the agreement of sale because the real estate that is the subject of the agreement of sale is located on Oahu thereby giving Taxpayer substantial nexus with Oahu to impose the county surcharge if the sale is subject to the 0.5% county surcharge. [Eff //06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

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§18-237-8.6-09 Allocation of gross income of theaters, amusements, etc. The gross income from the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, or any other place at which amusements are offered to the public shall be allocated to the taxation district in which the event takes place. Taxpayers will be subject to the 0.5% county surcharge on gross income from the business that has sufficient nexus with the Oahu district. Sufficient nexus with the Oahu district is established by the location of the event on Oahu. [Eff //06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

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§18-237-8.6-10 **All others.** The gross income or gross proceeds received by a taxpayer who reports business activity on Form G-45 or Form G-49 under the classification "all others" shall be allocated to a taxation district based upon the rules for allocating gross income for the business activity which is the most similar to the taxpayer's particular business activity. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to the taxation district and that allocation method is documented. [Eff //06] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

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